

## MEDIA POLICIES AND EDITORIAL (UN)FREEDOM

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### SUMMARY

Despite the declarations for guaranteeing editorial freedom, policies stipulated by the law and the bylaws of the media regulatory body prevent editorial freedom. Even though we do not think that citing article 16 from the Constitution of the Republic of Macedonia, which refers to the freedom of speech, would be more than declarative, we still point out as symptomatic its absence from the laws that refer to the media.

With no precedent in contemporary Europe, let alone EU, the Macedonian Law on Audio and Audiovisual Media Services, which was proposed by the Government, stipulates in details the form and the content that the broadcasters with national concessions have to produce and broadcast. The regulatory body, the Agency for Audio and Audiovisual Media Services, regulates the content in even greater detail, sanctioning the deviations, too. The comparative analysis of the legislation and the other relevant documents regarding the media policies of the EU member states, the strategic documents of their regulatory bodies, as well as the reports from the monitoring conducted by their authorised agencies, shows that no *EU country has such a high level of control by the central government as Macedonia*. The *European Directive* (article 4) obliges self-regulation and/or co-regulation on a national level to a degree that the national legislation of each country allows. Furthermore, it states that these systems of self-regulation and/or co-regulation should be widely accepted by the main concerned actors, which should enable effective implementation. The *Directive* concretely (article 9) asks the member states to encourage media to adopt their own codes of conduct regarding audio-visual commercial content which can be met in children programmes and refer to food which contains high level of fats, salt and sugar.<sup>1</sup>

When we say control by the central government, we mean the use of the laws by the executive institutions for enacting policies for controlling the editorial freedom, because it is the central government that writes and proposes these laws. The role of the regulatory body, i.e. the Agency for

Audio and Audiovisual Media Services, is to control the content in even greater detail, by stipulating its structure in bylaws, and by implementing regular, irregular and control oversight of the programme, which can also include sanctions (financial fines and taking away work permits) for deviations from the prescribed content and form.

The German law, for example, prescribes the conditions for self-regulation of the media. The programme is not regulated, except in the segments that are regulated by the Directive. Each medium has to have an Advisory board, which cares for the editorial and programmatic values, controlling the power of the management in that way. Article 49, line 1, states that the supervision refers to questions regarding ownership and protection of personal information.<sup>2</sup>

### THE KEY QUESTIONS THIS POLICY BRIEF TRIES TO ANSWER ARE:

- What is the space for the editorial freedom, given that the programmatic frames are prescribed in advance by the law and the bylaws?
- What is the purpose of prescribing the format and the type of the programmatic content in a law?
- What is the possibility that several technical oversights, followed by draconic fines, lead to closing down of certain media?
- To which extent does the state control and regulation deform the principal commitment for guaranteed editorial freedom?
- What are the mechanisms for delegating rights and obligations to media for setting their own editorial policies and for determining their programmes? Which bylaws, strategies, practices etc. are needed?

The review of the materials conducted by the desk analysis so far, leads to the following recommendations:

### RECOMMENDATIONS:

- To the lawmakers: to pass the right for regulating the content from the Agency to the media houses, thus allowing self-regulation.
- To the Agency for Audio and Audiovisual Media Services: to deregulate the programmatic content, allowing the lawmaker to delegate the right of self-regulation to the media houses, by setting their own bylaws for regulating their content.

- To the Government: to change the Law on Audio and Audiovisual Media Services so that the Agency would not have jurisdiction on setting the form and content outside the areas that the EU directive regulates: protection of minors (art. 27 and 12), protection of consumers, i.e. advertising and sponsorship (art. 1 and 10) and product placement (art. 11), hate speech (art. 15), accessibility for people with disabilities (art. 7), reporting on public events which are of interest to the general public (art. 14) and promotion and distribution of European works (art. 13 and 16).
- To the professional associations and the owners of the media houses: to produce their own proposals for regulating the programmatic content, whose consistency with the professional standards and the values of the plural and free thought would be confirmed by an independent body for self-regulation.
- To the professional associations and the civil sector: to continue the debate on reforms of the media regulation and improvement of the professionalism in the media by establishing mechanisms for self-regulation through models and forms which will be decided through dialogue and based on consensus.

## CONTEXT

The analysis of the context shows that in the past several years there is a decline in media freedom in Macedonia. Relevant international organizations consider this to be a serious problem. Their documents mention scandals with wiretapping of journalists, physical attacks on them, interference of the government in the editorial policies of the media, as well as self-censorship by journalists.

The European Commission Progress Report for 2016 notes that the freedom of expression and media remain a serious challenge in the current political climate. The country did not show any progress last year and there is still a lack of balanced reporting from the media, despite some encouraging signs. Suggestions for improving the situation that are proposed are: ensuring total transparency of government advertising, developing mechanisms for free release of information of public interest on the public broadcaster, self-restraint of politicians and public servants from charges on defamation,

in accordance with the practice of the European Court of Human Rights, and ensure that the public has access to objective and accurate reporting. The report also notes that, in the last year, there were several cases of intimidation of journalists, two reports on damaging property and two death threats. It also notes the issue of self-censorship, alongside the release of the wiretapped materials that show that the journalists have been illegally monitored during the past several years.<sup>3</sup>

According to the 2016 annual report on freedom of speech of the independent international organization “Freedom House“, Macedonia is on a downward line and now belongs to the group of “not free” countries. The country has 3.5 points (on a scale from 1 to 7, where 1 is highest freedom and 7 is lowest). The change from a “partly-free” to “not free” country is a consequence of the wiretapping of journalists, the corruption ties between owners of media and officials, as well as the increase in the threats and attacks on media workers. The report also mentions that Macedonian media are deeply polarized along political lines. Self-censorship among journalists is common, mostly due to pressure from media owners, with particular business or political interests, and recently, concerns about surveillance. The report also notes that the journalists are poorly paid and are facing serious legal charges if they engage in critical and investigative reporting. The key events for the downgrade of Macedonia are the following: the wiretapping scandal that showed that more than 100 journalists have been monitored, government representatives had a role in creating the content of certain private media, and numerous journalists received threats or were attacked during the previous year.<sup>4</sup>

According to the non-governmental and non-profit organization “Human Rights Watch” journalists from Western Balkans are facing hostile environment, which makes critical reporting harder for them. In addition, governments from Macedonia and the region use advertisement as a means for putting pressure. Concretely, regarding Macedonia, the wiretapping scandal from 2015 is mentioned again. On the anti-governmental protests, there were cases of police brutality against journalists. The report mentions the arrest of the journalist Zoran Bozinovski from the “Burevesnik” portal, accused of espionage, blackmailing and other criminal activities, even though part of the public, and especially the journalist associations treat this case as politically motivated. The report cites the Association of Journalists in Macedonia, which says that the government has not identified a single suspect for the 30

attacks on journalists registered in the previous four years.<sup>5</sup>

The ranking for 2016 of the international non-governmental organization “Reporters without borders”, which assesses countries according to the freedom of press, ranks Macedonia on the 118th place out of 180 countries. This is a decline of one place compared to the year before. Specifically, it is mentioned that the removal of the defamation/libel from the Criminal Code in 2012, which was replaced with civil actions may bring heavy fines and jail terms for the reporters and media owners. At least 580 defamation/libel cases have been submitted until 2014, tens of which are against journalists. The report cites the information from the survey of the Independent Union of Journalists and Media Workers of Macedonia, that more than one half of the journalists reported that they self-censor their work.<sup>6</sup>

## EDITORIAL FREEDOM

The Law on Audio and Audiovisual Media Services has been changed five times since its introduction on 26.12.2013, the last one being on 01.08.2016, when the fines have been reduced.<sup>7</sup> That change is not included in the previous studies of the ISSHS (“Legalizing Restrictions of the Freedom of the Press,” “Technology of State Capture: Overregulation in Macedonian Media and Academia,” “Fines in Macedonian Legislation over the years 1995-2014” and “Freedom of Expression, Association and Entrepreneurship in a Captured State: Macedonia in 2015.”) The change is a result of the Przhino agreement, which stipulates that all fines for the media from the Law on Audio and Audiovisual Media Services and the Electoral Code) will be reduced by 50%.<sup>8</sup> The possibility for closing down a medium due to high fines still remains disproportionate, despite the reduction in the fines. Namely, the fines are identical for every medium, regardless of their financial power. Therefore, smaller media, which are usually more independent, may be closed with just one fine, differently from the bigger media, which can easily sustain the fines.

Regarding editorial freedom, the most notable example of overregulation is article 92 of the Law on Audio and Audiovisual media services. This article contains 15 lines which prescribe in details the programmatic structure and content, as well as the form (length, genre etc.) of the broadcasters. The new changes in the Law added 11 new lines (from 92a to 92i).<sup>9</sup> It is these lines, which represent direct intervention in the programmatic structure, that can be a basis for financial fines which the broadcasters can get, which are described in articles 145-149 of the same Law.

As an illustration for the direct interference of the government in the media, article 92b can be pointed out. It is about the Inter-resources Commission, which is created by the Government of the Republic of Macedonia and consists of: one representative of Ministry of Finance, Ministry of Culture, Macedonian Film Agency, Agency for Audio and Audiovisual Media Services, Office of the President of the Government, Public Revenues Office and Ministry of Information Society and Administration. This commission directly allows the government to affect the content of the programme and to participate in the financing of the media, i.e. to capture them. This commission determines if the criteria from article 92, line 11, of the Law are met, and proposes how to cover the expenses for production of domestic programme. All these criteria refer to the financing of domestic programme material, which are represented as materials of public interest, and failure to meet these criteria leads to high penalties. Broadcasters have a right to ask the Ministry of Information Society and Administration to cover up to 50% of their expenses for producing this programme, but only if their products are: original, authentic etc. (art. 92, line 11). This suggests that the financing of the domestic programme can easily lead to political abuses.

The highest penalties from the Law refer to these regulations. Article 145, lines 8 and 9, stipulates that the national TV broadcasters should produce at least 10 hours domestic documentary programme (30 hours for the public broadcaster) and at least 20 hours domestic film programme (30 hours for the public broadcaster), and broadcast them between 7,00 and 19,00. The fines for breaching these regulations have been reduced with the latest changes, from 100.000 euros, to 50.000 euros. At the same time, the fines for the responsible person are 1.500 euros (down from 3.000-5.000 previously).

Other articles of the Law on Audio and Audiovisual Media Services which include financial fines are:

- Article 146 prescribed fines of 20.000 euros for offenses related to broadcasting vocal or instrumental music in Macedonian language or other language of the ethnic communities. These fines were reduced to 10.000 euros recently, while the fines for the responsible persons have been reduced from 1.000-3.000 euros, to 500.
- Article 147 stipulated penalties between 10.000 and 20.000 euros

for offenses related to preventing expert oversight, secret associates, forbidden media concentration, not reporting changes in ownership structure or (not acceptance of these changes from the Agency), failure to provide protection to minors etc. These fines were reduced to 5.000 euros. In addition, the fines for the responsible persons, which were previously 1.000-3.000 euros, have been reduced to 500.

- Article 148 prescribes penalties for legal entities which do not take records of the broadcasted programme, do not have records of the whole programme, organizes unlawfully games of luck. These penalties were between 5.000 and 10.000 euros, and have been reduced to 2.500 recently. Also, the fines for the responsible persons were between 500 and 1.000 euros, but have been reduced to 250.
- Article 149 regulates the fines for legal entities which break the agreements for cinematographic products, do not show the identifications signs in all programmes etc. these fines were between 3.000 and 5.000 euros, and were reduced to 1.500 euros with the latest changes. The corresponding penalties for the responsible persons amount 5000 euros, down from 1.000-1.500.

The final example of how article 92 restricts the media is the conflict that this article has with article 67 of the same law. Namely, article 67 allows broadcasters to create their programmatic concept independently, while article 92 obliges them in details how to produce certain type of programme.

## REGULATORY BODY

The Agency for Audio and Audiovisual Media Services is the main independent regulatory body which implements the Law on Audio and Audiovisual Media Services. It is founded by the government and is financed by the broadcasting fee, by loans and by financial and technical assistance.<sup>10</sup> The bodies of the Agency are the Council and the Director. The Council consists of seven members, elected by the Assembly of the Republic of Macedonia, on a nomination of the authorized proposers: the association of journalists with most members, the Inter-University Conference, the Chamber of Lawyers, the Federation of Trade Unions of Macedonia, the Association of the Units

of Local-self Government and the Committee on Election and Appointment Issues (which proposes two members).<sup>11</sup> The biggest problem of the Council is its partisanship and the notion that some of its members do not come from the field of media.

Regarding transparency, the work of the Agency can be followed on its official website, but the problem is that it is very confusing. Meetings of the Council can be attended by anyone, with previous announcement, and one can get information on them also through the Macedonian informative agency.

Regarding oversight, article 27 of the Law on Audio and Audiovisual Media Services allows the Agency to do programmatic, administrative and expert oversight. Regular oversight is done according to the annual programme for programmatic and administrative oversight. Programmatic oversight is conducted in accordance with the Methodology for implementation of programmatic oversight. Irregular oversight is done after an initiative from the state organs, legal entities or natural persons or by official duty after a suspicion from the Agency. Control oversight is done after the end of the term given by the Agency, in order to see if the subject has followed the guidelines of the Agency. These reports are available on the official web-site of the Agency, but are chronologically ordered, which makes them confusing to follow.

The work of the Agency is regulated by the Rules of Procedure, which prescribes the work of the Agency in 95 articles.<sup>12</sup> Among the bylaws, there are 26 documents (rulebooks, guidelines, manuals and plans) which additionally regulate the work of the Agency.<sup>13</sup>

The most relevant document when the editorial freedom is concerned is the Draft-Regulation on the obligations for broadcasting originally-created programme, music, documentary and film programme.<sup>14</sup> In 16 articles, this document regulates further the provisions from article 92 of the Law which relate to broadcasting originally-created programme in the Republic of Macedonia, in Macedonian language or in some of the languages of the ethnic minorities that live in Macedonia, to broadcasting vocal, instrumental and/or vocal-instrumental music and to production and broadcasting domestic documentary and film programme. The first articles define what is originally-created programme, audio-visual cultural heritage, programme from own production etc.

Good illustration is article 9 of the Regulation, which prescribes that it is allowed to have 5% deviations from the requirement for equal

presence of folk and pop music in the totally broadcasted music during the whole week, i.e. it is allowed to have 24 minutes more or less of each type of music.

When all these documents are analysed, it can be noticed that the independent regulatory body, the Agency for Audio and Audiovisual Media Services, reflects the bureaucratic abuse and the techniques for regulating the programme, with the purpose to intimidate the media, which is a feature of a captured state.

## CONCLUSIONS

The situation in the media regarding freedom of expression and political influences on editorial freedom is alarming. All major reports of relevant international organizations document this.

The Law on Audio and Audiovisual Media Services regulates programmatic content in tiny details, limiting independent editorial freedom in that way. The fines prescribed in the Law have been halved recently, but may still lead to closures of inappropriate media. The Law prescribes forming of different commissions, which serve as an extended arm of the government and enable interference in the independence of the media.

The Agency for Audio and Audiovisual Media Services has adopted bylaws which additionally affect the editorial freedom of the media. Also, the composition of the Council allows partisanship of the decisions of the Agency.

## RECOMMENDATIONS:

- To the lawmakers: to pass the right for regulating the content from the Agency to the media outlets, thus allowing self-regulation.
- To the Agency for Audio and Audiovisual Media Services: to deregulate the programmatic content, allowing the lawmaker to delegate the right of self-regulation to the media houses, by setting their own bylaws for regulating their content.
- To the Government: change the Law on Audio and Audiovisual Media Services so that the Agency would not have jurisdiction on setting the form and content outside the areas that the EU Directive regulates: protection of minors (art. 27 and 12), protection of consumers, i.e. advertising and sponsorship (art. 1 and 10) and product placement (art. 11), hate speech (art. 15), accessibility for people with disabilities (art. 7),

reporting on public events which are of interest to the general public (art. 14) and promotion and distribution of European works (art. 13 and 16).

- To the professional associations and the owners of the media houses: to write their own proposals for regulating the programmatic content, whose consistency with the professional standards and the values of the plural and free thought would be confirmed by an independent body for self-regulation.
- To the professional associations and the civil sector: continue the debate on reforms of the media regulation and improvement of the professionalism in the media through establishing mechanisms for self-regulation through models and forms which will be decided through dialogue and based on consensus.

<sup>1</sup>“Directive 2010/13/ EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive),” available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0013&from=EN>, accessed on 18 April 2017.

<sup>2</sup> Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty) in the version of the 15th Amendment to the Interstate Broadcasting Treaties, article 59.

<sup>3</sup>“The Former Yugoslav Republic of Macedonia 2015 Progress Report, SWD (2016) 362 final” (Brussels: 9 November 2016), European Commission, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf), accessed on 1 March 2017.

<sup>4</sup>“Macedonia: Freedom of the Press 2016”, Freedom House, available at: <https://freedomhouse.org/report/freedom-press/2016/macedonia>, accessed on 28 February 2017.

<sup>5</sup>“Western Balkans: Unchecked Attacks on Media,” Human Rights Watch, available at: <https://www.hrw.org/news/2016/11/30/western-balkans-unchecked-attacks-media>, accessed on 28 February 2017.

<sup>6</sup>“Macedonia”, Reporters without borders, available at: <https://rsf.org>.

[org/en/macedonia](#), accessed on 27 February 2017.

<sup>7</sup> Law for amendments and changes of the Law on audio and audio-visual media services, (Official Gazette of the Republic of Macedonia No. 142/16).

<sup>8</sup>“Agreement between the four political parties 20 July 2016 (20/07/2016),” European Commission, available at: [http://eeas.europa.eu/archives/delegations/the\\_former\\_yugoslav\\_republic\\_of\\_macedonia/press\\_corner/all\\_news/news/2016/2016-07-20\\_agreement\\_en.htm](http://eeas.europa.eu/archives/delegations/the_former_yugoslav_republic_of_macedonia/press_corner/all_news/news/2016/2016-07-20_agreement_en.htm), accessed on 30 March 2017.

<sup>9</sup> Law for amendments and changes of the Law on audio and audio-visual media services, (Official Gazette of the Republic of Macedonia No. 132/14).

<sup>10</sup> Law on audio and audio-visual media services, (Official Gazette of the Republic of Macedonia No. 184/13).

<sup>11</sup> Law on audio and audio-visual media services, (Official Gazette of the Republic of Macedonia No. 184/13), article 14.

<sup>12</sup> Rulebook for working of the Agency for audio and audio-visual media services, available at: [http://www.avmu.mk/images/De-lovnik\\_za\\_rabota\\_na\\_Agencijata\\_za\\_audio\\_i\\_audiovizuelni\\_mediumski\\_uslugi.pdf](http://www.avmu.mk/images/De-lovnik_za_rabota_na_Agencijata_za_audio_i_audiovizuelni_mediumski_uslugi.pdf), accessed on 30 March 2017.

<sup>13</sup> Finished discussions, Agency for audio and audio-visual media services, available at: [http://www.avmu.mk/index.php?option=com\\_content&view=article&id=1827&Itemid=484&lang=mk](http://www.avmu.mk/index.php?option=com_content&view=article&id=1827&Itemid=484&lang=mk), accessed on 30 March 2017.

<sup>14</sup> Draft-Regulation on the obligations for broadcasting originally-created programme, music, documentary and film programme, Agency for audio and audio-visual media services, available at: [http://www.avmu.mk/images/4-Nacrt-Pravilnik\\_za\\_obvrskite\\_za\\_emituvani\\_izvorno\\_sozdadena\\_programa\\_muzika\\_dokumentarina\\_i\\_igrana\\_programa.pdf](http://www.avmu.mk/images/4-Nacrt-Pravilnik_za_obvrskite_za_emituvani_izvorno_sozdadena_programa_muzika_dokumentarina_i_igrana_programa.pdf), accessed on 30 March 2017.

